

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

GEORGE WESTON BAKERIES

Employer

and

BAKERY, CONFECTIONERY, TOBACCO
WOKRERS AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL #50,
AFL-CIO

Petitioner

Case 1-RC-21993

DECISION AND DIRECTION OF ELECTION^[1]

This case concerns the appropriateness of a petitioned-for unit of retail clerks and a shipping adjuster employed at the Employer's thrift store and shipping operation in Rutland, Vermont. The Employer asserts that the shipping adjuster must be excluded from the unit on the ground that he lacks a community of interest with the retail clerks, while the Union maintains that he shares a sufficient community of interest with them to warrant his inclusion.^[2] I find that the wall-to-wall unit sought by the Union is appropriate and shall include the shipping adjuster in the unit.

FACTS

The Employer's operations

The Employer is engaged in the retail sale of baked goods, such as bread, bagels, English muffins, and cakes. Tractor-trailer drivers deliver product from the Employer's distribution depot

in Colony, New York to the facility at issue in Rutland, Vermont. There, the product is sorted and loaded into the trucks of “independent operators,” who have routes and deliver the product to area stores.^[3] In addition, some of the product is sold at a thrift store at the Rutland facility. The facility in Rutland has a thrift store in front with its own entrance. It also has a sales office and a shipping dock/warehouse. A door in the back of the store leads to the dock area.

Divisional Sales Manager Ron Cronk oversees the Employer’s operations at its facilities in Glens Falls, New York,^[4] and Rutland, Vermont. Matt Brians, one of three district managers, is based in Glens Falls. He oversees three routes in Glens Falls and seven routes in Rutland, as well as the shipping operation and thrift store in Rutland.

Duties of the retail clerks and shipping employee

Four retail clerks and Bakery Outlet Manager Lynn Stewart work in the Rutland thrift store, which is open from 8:30 a.m. to 5 p.m., Monday through Saturday. One of the retail clerks, Linda Dunn, works full-time, and the other three clerks work part-time. The retail clerks man the cash register, stock shelves with product they obtain from the “thrift cage,” clean the store, and throw away baked goods that have not sold.

One shipping adjuster, Gene Santos, works in the shipping dock/warehouse. Santos works Monday, Tuesday, Thursday, Friday, and Saturday from 2 a.m. to 8 a.m. Santos enters the warehouse from a separate door in the back and does not have keys to the thrift store. Santos’ job is to ensure that the seven independent operators in Rutland have the product they need and to make adjustments in a computer system that tracks the flow of product. When Santos arrives at 2 a.m., he opens the dock area where the tractor trailers deliver product from Colony. The tractor trailer drivers place stacks of racks marked with route numbers in corresponding painted squares marked with route numbers that are set up for the independent operators. The tractor trailer drivers also deliver “overbake,” i.e. product in excess of that ordered by the independent operators, which may either be sold to the independent operators or sold in the thrift store. If the independent operators are missing any items or wish to purchase extra items, Santos obtains the product for them from the “stock cage” and makes any necessary adjustments in the Employer’s computer system.

Independent operators may return outdated product to the Rutland facility for credit. Six of the seven independent operators bring returns back to the Rutland facility at the end of their day. They bring the returned product to the thrift store, where one of the retail clerks checks it in and keys a code into hand-held computers carried by the independent operators, to verify that all of the product for which they seek credit has, in fact, been turned in. The seventh independent operator goes home at the end of his route and brings in his returns at 2 a.m. when Santos is present. Santos verifies his returns and keys the code into his hand-held computer. Santos places

the returns into the square designated for stock for the retail clerks to sell in the thrift store.

At the end of Santos' shift, he takes inventory of the product that is left and to be transferred to the thrift store. He enters the items into the thrift shop account in the computer system. When Stewart, the bakery outlet manager, arrives in the morning before the thrift store opens, she inventories the product as well to make sure that Santos has correctly keyed in the product for which she is to assume responsibility. Retail clerk Linda Dunn or one of the other clerks does this on the days that Stewart is not in. Then Stewart or one of the retail clerks rolls the overbakes and returns down a ramp to the "thrift cage" just outside the back door of the store, from which they stock the shelves in the store.

Supervision^[5]

The retail clerks report to Bakery Outlet Manager Stewart, who, in turn, reports to District Manager Brians. Stewart reviews evaluations with the clerks and has final authority to approve their wage increases, although Divisional Sales Manager Cronk signs off on them. Brians plays no role in that process. With respect to the hiring of retail clerks, Cronk testified that Stewart would put an ad in the newspaper and do initial interviews, but that he would ask Brians to re-interview candidates with Stewart. Stewart is responsible for any discipline of the thrift store employees. Cronk testified that Stewart would make recommendations to Brians regarding termination and then "go through channels," and that her recommendations regarding hiring and firing are routinely followed.

The shipping adjuster, Santos, reports directly to Brians. Brians comes to Rutland three to four days a week, but may be at the Rutland facility prior to Santos' 8 a.m. departure only about once a week.^[6] Cronk testified that Brians would be involved in hiring for the shipping position and for disciplining the shipping adjuster. Brians approves Santos' wage increases, which Cronk signs off on, and either Brians or Cronk reviews Santos' evaluation with him.

Temporary interchange, transfers, and promotional opportunities

The retail clerks and shipping adjuster do not fill in for one another during absences. Until now, the district manager has performed Santos' job when he is out due to illness or vacation.^[7] Cronk testified that this year he intends to have Mark Brayton, the shipping employee in Glens Falls, cover for Santos during his absences, but Brayton has not done so yet. Santos has never worked anywhere other than Rutland.

There have been no promotions or transfers between the retail clerk and shipping positions. Cronk testified that a promotional opportunity for the shipping adjuster would be to

become a district manager or to purchase a route and become an independent operator, although, as noted above, the independent operators are not employed by the Employer. Cronk testified that the retail clerks' promotional opportunity would be to become a bakery outlet manager.

Pay, benefits, and other working conditions

Both the shipping adjuster and the retail clerks are hourly paid. There are different pay scales for shipping employees and bakery outlet employees. The retail clerks earn about \$10 per hour on average and the shipping adjuster earns about \$12 per hour. Stewart records the hours of the bakery outlet employees, and the full-time clerk, Dunn, does this in her absence. Santos completes his own time sheet and gives it to Stewart, who forwards all of the time records to the appropriate person for payroll purposes.

Part-time employees, including the part-time retail clerks and the shipping adjuster, are eligible for benefits on the same basis. Currently, part-time employees are eligible for medical benefits if they work at least 1000 hours per year. The Employer previously offered life insurance to part-time employees, but this ceased in 2006. Full-time employees receive different benefits from part-time employees.

The retail clerks wear a "George Weston Bakery" shirt. The shipping adjuster does not wear a uniform. The shipping adjuster has a little office with a computer located in the dock area. The thrift store employees use that office as a break area in the afternoons.

Pattern of bargaining

The Employer's employees in Rutland and Glens Falls have never been represented. The Union's international vice president, Art Montminy, testified that he negotiated a collective-bargaining agreement between Entemann's, Inc., which is a division of George Weston Bakeries, and Local No. 3 of the Bakery, Confectionery, Tobacco Workers and Grain Millers, covering a production and maintenance unit at a facility in Long Island, New York. The 1998-2003 agreement, which was submitted into evidence, covered employees in the "Thrift Store and Returned Goods" department, including sales clerks, and employees in the titles of "receiver of returned goods," "bulk foreperson," and "rackloader." Montminy testified that the duties of the shipping adjuster in Rutland, as described by Cronk in his testimony, are similar to those of the receiver of returned goods, bulk foreperson, and rackloader at Entemann's. Montminy also testified that there is a successor to the 1998-2003 agreement in which there was no change to the job titles covered, although the current agreement was not offered into evidence.

Finally, Montminy testified that it is common in the industry to include shipping employees and thrift store clerks in the same bargaining unit and that there are other locations

where Bakery, Confectionery, Tobacco Workers and Grain Millers locals represent those types of employees in the same unit, but he did not give any examples. He testified that the bargaining unit at Entemann's in Long Island is the only George Weston Bakeries unit he is aware of that includes these employees in the same unit.^[8]

ANALYSIS

It is well settled Board law that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*; ^[9] *Morand Bros. Beverages Co.* ^[10] Neither, however, is a union compelled to seek a narrower appropriate unit if a broader unit also is appropriate. *Overnite Transportation Co.* ^[11] In determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.* ^[12] In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other employees, as well as history of bargaining. *Overnite Transportation Co.* ^[13] The petitioner's desire as to the unit is a relevant consideration, though not dispositive. *Florida Casino Cruises.* ^[14]

I find that the petitioned-for wall-to-wall unit is appropriate. The Board has held that a plant-wide unit is presumptively appropriate under the Act, that a community of interest inherently exists among such employees, and that the burden is on the Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. *Airco, Inc.* ^[15]

The Employer has failed to show that the interests of the shipping adjuster are so disparate from those of the retail clerks that they cannot be represented in the same unit. It is true that the shipping adjuster has generally different duties from the retail clerks, that he has little or no contact with them due to his different hours, that the two classifications do not fill in for one another, and that only the retail clerks wear a uniform. On the other hand, the retail clerks and the shipping adjuster share common second-level supervision. Both the shipping adjuster and the retail clerks share the duty of checking in returns from the independent operators and, in the absence of the bakery outlet manager, one of the retail clerks takes an inventory of the thrift store product in the morning, which is a duty also performed by the shipping adjuster. The shipping and thrift store operations are functionally integrated, as the shipping adjuster is responsible for gathering and taking an inventory of outdated product and overbakes to be transferred to the

store. The shipping adjuster enjoys the same benefits as the part-time retail clerks, and his wages are not significantly higher. *Airco, Inc.*^[16] (employer failed to rebut presumption that plant-wide unit of plant operators, truck drivers, and mechanics is appropriate, even though the three groups have very little in common, have little contact, and different skills, training, and working conditions, where the employee complement of 32 is small and there is functional integration); *Huckleberry Youth Programs*^[17] (overall unit of all program employees is presumptively appropriate, and peer health educators may not be excluded despite different wages and benefits and different immediate supervision, where secondary and overall supervision is the same).

While not dispositive, I note the Union's desire to represent the Employer's employees on a plant-wide basis.^[18] I also note that excluding the shipping adjuster from the unit would create a residual unit, which the Board seeks to avoid. *Airco*,^[19] *Huckleberry Youth Programs*.^[20] Finally, I shall include the shipping adjuster in the unit because he would otherwise be the only unrepresented employee at the Rutland facility. *United Rentals, Inc.*,^[21] *Holiday Inn-Troy*,^[22] *The Private Medical Group of New Rochelle*.^[23]

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time retail and shipping employees employed by the Employer at its at Rutland, Vermont facility, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local #50, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*; ^[24] *NLRB v. Wyman-Gordon Co.* ^[25] Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility.* ^[26] In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before March 8, 2006. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by March 15, 2006. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlrb.gov.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region

National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this day of March, 2006.

h:\r01com\decision\1-rc-21993(george weston bakeries)(ljf).doc

[1] Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[2] The Union is willing to proceed to an election in an alternative unit.

[3] Neither the tractor trailer drivers who deliver product to Rutland nor the drivers who deliver product to the stores are employees of George Weston Bakeries. The drivers who transport the product from Colony to Rutland are employed by another company called "Penske." The independent operators are self-employed.

[4] I take administrative notice of the fact that Glens Falls is in the State of New York.

[5] The parties have stipulated, and I find, that Bakery Outlet Manager Lynn Stewart and District Manager Matt Brians are statutory supervisors who should be excluded from any unit found appropriate.

[6] Brians spends some of his time visiting grocery stores serviced by the independent operators to make sure that the Employer's products are fully stocked on the shelves and that there are no problems at the stores.

[7] Santos has been the shipping employee for a year and a half. He gets two weeks of vacation and

called in sick only once last year.

[8] The record does not reveal whether there are any units represented by the Bakery, Confectionery, Tobacco Workers and Grain Millers in which shipping employees are excluded from units that include thrift store clerks.

[9] 311 NLRB 766 (1993).

[10] 91 NLRB 409 (1950).

[11] 322 NLRB 723, 723-724 (1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

[12] 295 NLRB 109, 111 (1989).

[13] Supra at 724, citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

[14] 322 NLRB 857, 858 (1997), citing *Airco, Inc.*, 273 NLRB 348 (1984).

[15] 273 NLRB 348, 349 (1984). The Employer cites *Western Electric Co.*, 98 NLRB 1018 (1952), for the proposition that Section 9(b) of the Act establishes a presumption in favor of a plant-wide unit only in the face of a multi-facility employer. It is true that the Board approved a petitioned-for company-wide unit composed of multiple locations in *Western Electric Co.*, but the Board did not address in that case the issue of the presumption in favor of plant-wide units at a single location. The Employer cites *Moore Business Forms*, 204 NLRB 552 (1973), for the proposition that a petitioning union has the burden of establishing a sufficient community of interest as between disparate units performing work at the same plant. That case is, however, inapposite, in that there, unlike here, the petitioner sought to represent only part of a production and maintenance department at a facility, which the Board found to be inappropriate. Here the Union seeks a plant-wide unit, and the burden to demonstrate its inappropriateness falls on the Employer, as set forth in *Airco*.

[16] Id.

[17] 326 NLRB 1271, 1274 (1998).

[18] In concluding that a plant-wide unit is appropriate here, I do not rely on the evidence regarding the pattern of bargaining at this Employer or in the industry, which consisted essentially of one expired collective-bargaining agreement and no other specific examples.

[19] Supra, 273 NLRB at 349.

[\[20\]](#) Supra, 326 NLRB at 1274.

[\[21\]](#) 341 NLRB 540, 542 fn. 11 (2004).

[\[22\]](#) 238 NLRB 1369, 1370 fn. 2 (1978).

[\[23\]](#) 218 NLRB 1315, 1316 (1975).

[\[24\]](#) 156 NLRB 1236 (1966).

[\[25\]](#) 394 U.S. 759 (1969).

[\[26\]](#) 315 NLRB 359 (1994).